

Union Calendar No. 213

107TH CONGRESS
2D SESSION

H. R. 2341

[Report No. 107-370]

To amend the procedures that apply to consideration of interstate class actions to assure fairer outcomes for class members and defendants, to outlaw certain practices that provide inadequate settlements for class members, to assure that attorneys do not receive a disproportionate amount of settlements at the expense of class members, to provide for clearer and simpler information in class action settlement notices, to assure prompt consideration of interstate class actions, to amend title 28, United States Code, to allow the application of the principles of Federal diversity jurisdiction to interstate class actions, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JUNE 27, 2001

Mr. GOODLATTE (for himself, Mr. BOUCHER, Mr. SENSENBRENNER, Mr. MORAN of Virginia, Mr. ARMEY, Mr. STENHOLM, Mr. HYDE, Mr. DOOLEY of California, Mr. BRYANT, Mr. HOLDEN, Mr. COX, Mr. CHABOT, Mr. CRAMER, Mr. OXLEY, Mr. SUNUNU, Mr. BACHUS, Mr. BARTLETT of Maryland, and Mr. GOSS) introduced the following bill; which was referred to the Committee on the Judiciary

MARCH 12, 2002

Additional sponsors: Mr. RILEY, Mrs. BIGGERT, Mr. FLAKE, Mr. GILLMOR, Mr. GOODE, Mr. KELLER, Mr. GALLEGLY, Mr. COOKSEY, Mr. DEAL of Georgia, Mr. SHAYS, Mr. SIMMONS, Mr. SMITH of Texas, Mr. BARR of Georgia, Mr. BRADY of Texas, Mr. EHRLICH, Mr. LEWIS of Kentucky, Mr. KNOLLENBERG, Mr. COBLE, Mr. ISAKSON, Mr. WICKER, Ms. HART, Mr. PENCE, Mr. ISSA, Mr. CANNON, Mr. HOSTETTLER, Mr. GEKAS, Mr. TOM DAVIS of Virginia, Mrs. JOHNSON of Connecticut, Mr. BROWN of South Carolina, Mr. CANTOR, Mr. FORBES, Mr. SCHROCK, Mr. ROGERS of Michigan, Mr. NETHERCUTT, Mr. GRAHAM, Mr. GRAVES, Mr. FOLEY, Mr. SULLIVAN, and Mr. TIBERI

MARCH 12, 2002

Reported with an amendment, committed to the Committee of the Whole
House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in *italic*]

[For text of introduced bill, see copy of bill as introduced on June 27, 2001]

A BILL

To amend the procedures that apply to consideration of interstate class actions to assure fairer outcomes for class members and defendants, to outlaw certain practices that provide inadequate settlements for class members, to assure that attorneys do not receive a disproportionate amount of settlements at the expense of class members, to provide for clearer and simpler information in class action settlement notices, to assure prompt consideration of interstate class actions, to amend title 28, United States Code, to allow the application of the principles of Federal diversity jurisdiction to interstate class actions, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; REFERENCE; TABLE OF CON-**
4 **TENTS.**

5 (a) *SHORT TITLE.*—*This Act may be cited as the*
6 *“Class Action Fairness Act of 2002”.*

7 (b) *REFERENCE.*—*Whenever in this Act reference is*
8 *made to an amendment to, or repeal of, a section or other*
9 *provision, the reference shall be considered to be made to*
10 *a section or other provision of title 28, United States Code.*

1 (c) *TABLE OF CONTENTS.*—*The table of contents for*
 2 *this Act is as follows:*

Sec. 1. Short title; reference; table of contents.

Sec. 2. Findings and purposes.

Sec. 3. Consumer class action bill of rights and improved procedures for interstate class actions.

Sec. 4. Federal district court jurisdiction of interstate class actions.

Sec. 5. Removal of interstate class actions to Federal district court.

Sec. 6. Appeals of class action certification orders.

Sec. 7. Effective date.

3 **SEC. 2. FINDINGS AND PURPOSES.**

4 (a) *FINDINGS.*—*The Congress finds as follows:*

5 (1) *Class action lawsuits are an important and*
 6 *valuable part of our legal system when they permit*
 7 *the fair and efficient resolution of legitimate claims*
 8 *of numerous parties by allowing the claims to be ag-*
 9 *gregated into a single action against a defendant that*
 10 *has allegedly caused harm.*

11 (2) *Over the past decade, there have been abuses*
 12 *of the class action device that have harmed class*
 13 *members with legitimate claims and defendants that*
 14 *have acted responsibly, and that have thereby under-*
 15 *mined public respect for our judicial system.*

16 (3) *Class members have been harmed by a num-*
 17 *ber of actions taken by plaintiffs' lawyers, which pro-*
 18 *vide little or no benefit to class members as a whole,*
 19 *including—*

1 (A) plaintiffs' lawyers receiving large fees,
2 while class members are left with coupons or
3 other awards of little or no value;

4 (B) unjustified rewards being made to cer-
5 tain plaintiffs at the expense of other class mem-
6 bers; and

7 (C) the publication of confusing notices that
8 prevent class members from being able to fully
9 understand and effectively exercise their rights.

10 (4) Through the use of artful pleading, plaintiffs
11 are able to avoid litigating class actions in Federal
12 court, forcing businesses and other organizations to
13 defend interstate class action lawsuits in county and
14 State courts where—

15 (A) the lawyers, rather than the claimants,
16 are likely to receive the maximum benefit;

17 (B) less scrutiny may be given to the merits
18 of the case; and

19 (C) defendants are effectively forced into set-
20 tlements, in order to avoid the possibility of huge
21 judgments that could destabilize their companies.

22 (5) These abuses undermine our Federal system
23 and the intent of the framers of the Constitution in
24 creating diversity jurisdiction, in that county and
25 State courts are—

1 (A) *handling interstate class actions that*
2 *affect parties from many States;*

3 (B) *sometimes acting in ways that dem-*
4 *onstrate bias against out-of-State defendants;*
5 *and*

6 (C) *making judgments that impose their*
7 *view of the law on other States and bind the*
8 *rights of the residents of those States.*

9 (6) *Abusive interstate class actions have harmed*
10 *society as a whole by forcing innocent parties to settle*
11 *cases rather than risk a huge judgment by a local*
12 *jury, thereby costing consumers billions of dollars in*
13 *increased costs to pay for forced settlements and exces-*
14 *sive judgments.*

15 (b) *PURPOSES.—The purposes of this Act are—*

16 (1) *to assure fair and prompt recoveries for class*
17 *members with legitimate claims;*

18 (2) *to protect responsible companies and other*
19 *institutions against interstate class actions in State*
20 *courts;*

21 (3) *to restore the intent of the framers of the*
22 *Constitution by providing for Federal court consider-*
23 *ation of interstate class actions; and*

24 (4) *to benefit society by encouraging innovation*
25 *and lowering consumer prices.*

1 **SEC. 3. CONSUMER CLASS ACTION BILL OF RIGHTS AND IM-**
 2 **PROVED PROCEDURES FOR INTERSTATE**
 3 **CLASS ACTIONS.**

4 (a) *IN GENERAL.*—Part V is amended by inserting
 5 after chapter 113 the following:

6 **“CHAPTER 114—CLASS ACTIONS**

“Sec.

“1711. Judicial scrutiny of coupon and other noncash settlements.

“1712. Protection against loss by class members.

“1713. Protection against discrimination based on geographic location.

“1714. Prohibition on the payment of bounties.

“1715. Clearer and simpler settlement information.

“1716. Definitions.

7 **“§1711. Judicial scrutiny of coupon and other**
 8 **noncash settlements**

9 “The court may approve a proposed settlement under
 10 which the class members would receive noncash benefits or
 11 would otherwise be required to expend funds in order to
 12 obtain part or all of the proposed benefits only after a hear-
 13 ing to determine whether, and making a written finding
 14 that, the settlement is fair, reasonable, and adequate for
 15 class members.

16 **“§1712. Protection against loss by class members**

17 “The court may approve a proposed settlement under
 18 which any class member is obligated to pay sums to class
 19 counsel that would result in a net loss to the class member
 20 only if the court makes a written finding that nonmonetary
 21 benefits to the class member outweigh the monetary loss.

1 **“§ 1713. Protection against discrimination based on**
 2 **geographic location**

3 *“The court may not approve a proposed settlement*
 4 *that provides for the payment of greater sums to some class*
 5 *members than to others solely on the basis that the class*
 6 *members to whom the greater sums are to be paid are lo-*
 7 *cated in closer geographic proximity to the court.*

8 **“§ 1714. Prohibition on the payment of bounties**

9 *“(a) IN GENERAL.—The court may not approve a pro-*
 10 *posed settlement that provides for the payment of a greater*
 11 *share of the award to a class representative serving on be-*
 12 *half of a class, on the basis of the formula for distribution*
 13 *to all other class members, than that awarded to the other*
 14 *class members.*

15 *“(b) RULE OF CONSTRUCTION.—The limitation in*
 16 *subsection (a) shall not be construed to prohibit any pay-*
 17 *ment approved by the court for reasonable time or costs that*
 18 *a person was required to expend in fulfilling his or her obli-*
 19 *gations as a class representative.*

20 **“§ 1715. Clearer and simpler settlement information**

21 *“(a) PLAIN ENGLISH REQUIREMENTS.—Any court*
 22 *with jurisdiction over a plaintiff class action shall require*
 23 *that any written notice concerning a proposed settlement*
 24 *of the class action provided to the class through the mail*
 25 *or publication in printed media contain—*

1 “(1) at the beginning of such notice, a statement
2 in 18-point Times New Roman type or other func-
3 tionally similar type, stating ‘LEGAL NOTICE:
4 YOU ARE A PLAINTIFF IN A CLASS ACTION
5 LAWSUIT AND YOUR LEGAL RIGHTS ARE AF-
6 FECTED BY THE SETTLEMENT DESCRIBED
7 IN THIS NOTICE.’; and

8 “(2) a short summary written in plain, easily
9 understood language, describing—

10 “(A) the subject matter of the class action;

11 “(B) the members of the class;

12 “(C) the legal consequences of being a mem-
13 ber of the class;

14 “(D) if the notice is informing class mem-
15 bers of a proposed settlement agreement—

16 “(i) the benefits that will accrue to the
17 class due to the settlement;

18 “(ii) the rights that class members will
19 lose or waive through the settlement;

20 “(iii) obligations that will be imposed
21 on the defendants by the settlement;

22 “(iv) the dollar amount of any attor-
23 ney’s fee class counsel will be seeking, or if
24 not possible, a good faith estimate of the

1 *dollar amount of any attorney’s fee class*
2 *counsel will be seeking; and*

3 “(v) *an explanation of how any attor-*
4 *ney’s fee will be calculated and funded; and*
5 “(E) *any other material matter.*

6 “(b) *TABULAR FORMAT.—Any court with jurisdiction*
7 *over a plaintiff class action shall require that the informa-*
8 *tion described in subsection (a)—*

9 “(1) *be placed in a conspicuous and prominent*
10 *location on the notice;*

11 “(2) *contain clear and concise headings for each*
12 *item of information; and*

13 “(3) *provide a clear and concise form for stating*
14 *each item of information required to be disclosed*
15 *under each heading.*

16 “(c) *TELEVISION OR RADIO NOTICE.—Any notice pro-*
17 *vided through television or radio (including transmissions*
18 *by cable or satellite) to inform the class members in a class*
19 *action of the right of each member to be excluded from the*
20 *class action or a proposed settlement of the class action,*
21 *if such right exists, shall, in plain, easily understood*
22 *language—*

23 “(1) *describe the persons who may potentially*
24 *become class members in the class action; and*

1 “(2) *explain that the failure of a class member*
 2 *to exercise his or her right to be excluded from a class*
 3 *action will result in the person’s inclusion in the class*
 4 *action or settlement.*

5 **“§ 1716. Definitions**

6 *“In this chapter—*

7 “(1) *CLASS ACTION.—The term ‘class action’*
 8 *means any civil action filed in a district court of the*
 9 *United States pursuant to rule 23 of the Federal*
 10 *Rules of Civil Procedure or any civil action that is*
 11 *removed to a district court of the United States that*
 12 *was originally filed pursuant to a State statute or*
 13 *rule of judicial procedure authorizing an action to be*
 14 *brought by one or more representatives on behalf of*
 15 *a class.*

16 “(2) *CLASS COUNSEL.—The term ‘class counsel’*
 17 *means the persons who serve as the attorneys for the*
 18 *class members in a proposed or certified class action.*

19 “(3) *CLASS MEMBERS.—The term ‘class mem-*
 20 *bers’ means the persons who fall within the definition*
 21 *of the proposed or certified class in a class action.*

22 “(4) *PLAINTIFF CLASS ACTION.—The term*
 23 *‘plaintiff class action’ means a class action in which*
 24 *class members are plaintiffs.*

1 “(5) *PROPOSED SETTLEMENT*.—The term ‘pro-
 2 posed settlement’ means an agreement that resolves
 3 claims in a class action, that is subject to court ap-
 4 proval and that, if approved, would be binding on the
 5 class members.”.

6 (b) *TECHNICAL AND CONFORMING AMENDMENT*.—The
 7 table of chapters for part V is amended by inserting after
 8 the item relating to chapter 113 the following:

“114. Class Actions 1711”.

9 **SEC. 4. FEDERAL DISTRICT COURT JURISDICTION OF**
 10 **INTERSTATE CLASS ACTIONS.**

11 (a) *APPLICATION OF FEDERAL DIVERSITY JURISDIC-*
 12 *TION*.—Section 1332 is amended—

13 (1) by redesignating subsection (d) as subsection
 14 (e); and

15 (2) by inserting after subsection (c) the fol-
 16 lowing:

17 “(d)(1) *In this subsection—*

18 “(A) the term ‘class’ means all of the class mem-
 19 bers in a class action;

20 “(B) the term ‘class action’ means any civil ac-
 21 tion filed pursuant to rule 23 of the Federal Rules of
 22 Civil Procedure or similar State statute or rule of ju-
 23 dicial procedure authorizing an action to be brought
 24 by one or more representative persons on behalf of a
 25 class;

1 “(C) the term ‘class certification order’ means an
2 order issued by a court approving the treatment of a
3 civil action as a class action; and

4 “(D) the term ‘class members’ means the persons
5 who fall within the definition of the proposed or cer-
6 tified class in a class action.

7 “(2) The district courts shall have original jurisdiction
8 of any civil action in which the matter in controversy ex-
9 ceeds the sum or value of \$2,000,000, exclusive of interest
10 and costs, and is a class action in which—

11 “(A) any member of a class of plaintiffs is a cit-
12 izen of a State different from any defendant;

13 “(B) any member of a class of plaintiffs is a for-
14 eign state or a citizen or subject of a foreign state and
15 any defendant is a citizen of a State; or

16 “(C) any member of a class of plaintiffs is a cit-
17 izen of a State and any defendant is a foreign state
18 or a citizen or subject of a foreign state.

19 “(3) Paragraph (2) shall not apply to any civil action
20 in which—

21 “(A)(i) the substantial majority of the members
22 of the proposed plaintiff class and the primary de-
23 fendants are citizens of the State in which the action
24 was originally filed; and

1 “(ii) the claims asserted therein will be governed
2 primarily by the laws of the State in which the action
3 was originally filed;

4 “(B) the primary defendants are States, State
5 officials, or other governmental entities against whom
6 the district court may be foreclosed from ordering re-
7 lief; or

8 “(C) the number of proposed plaintiff class mem-
9 bers is less than 100.

10 “(4) In any class action, the claims of the individual
11 class members shall be aggregated to determine whether the
12 matter in controversy exceeds the sum or value of
13 \$2,000,000, exclusive of interest and costs.

14 “(5) This subsection shall apply to any class action
15 before or after the entry of a class certification order by
16 the court with respect to that action.

17 “(6)(A) A district court shall dismiss any civil action
18 that is subject to the jurisdiction of the court solely under
19 this subsection if the court determines the action may not
20 proceed as a class action based on a failure to satisfy the
21 requirements of rule 23 of the Federal Rules of Civil Proce-
22 dure.

23 “(B) Nothing in subparagraph (A) shall prohibit
24 plaintiffs from filing an amended class action in Federal
25 court or filing an action in State court, except that any

1 *such action filed in State court may be removed to the ap-*
2 *propriate district court if it is an action of which the dis-*
3 *trict courts of the United States have original jurisdiction.*

4 “(C) *In any action that is dismissed under this para-*
5 *graph and is filed by any of the original named plaintiffs*
6 *therein in the same State court venue in which the dis-*
7 *missed action was originally filed, the limitations periods*
8 *on all reasserted claims shall be deemed tolled for the period*
9 *during which the dismissed class action was pending. The*
10 *limitations periods on any claims that were asserted in a*
11 *class action dismissed under this paragraph that are subse-*
12 *quently asserted in an individual action shall be deemed*
13 *tolled for the period during which the dismissed action was*
14 *pending.*

15 “(7) *Paragraph (2) shall not apply to any class action*
16 *brought by shareholders that solely involves a claim that*
17 *relates to—*

18 “(A) *a claim concerning a covered security as*
19 *defined under section 16(f)(3) of the Securities Act of*
20 *1933 and section 28(f)(5)(E) of the Securities Ex-*
21 *change Act of 1934;*

22 “(B) *the internal affairs or governance of a cor-*
23 *poration or other form of business enterprise and*
24 *arises under or by virtue of the laws of the State in*

1 *which such corporation or business enterprise is in-*
2 *corporated or organized; or*

3 “(C) *the rights, duties (including fiduciary du-*
4 *ties), and obligations relating to or created by or pur-*
5 *suant to any security (as defined under section*
6 *2(a)(1) of the Securities Act of 1933 and the regula-*
7 *tions issued thereunder).*

8 “(8) *For purposes of this subsection and section 1453*
9 *of this title, an unincorporated association shall be deemed*
10 *to be a citizen of the State where it has its principal place*
11 *of business and the State under whose laws it is organized.*

12 “(9) *For purposes of this section and section 1453 of*
13 *this title, a civil action that is not otherwise a class action*
14 *as defined in paragraph (1)(B) of this subsection shall nev-*
15 *ertheless be deemed a class action if—*

16 “(A) *the named plaintiff purports to act for the*
17 *interests of its members (who are not named parties*
18 *to the action) or for the interests of the general public,*
19 *seeks a remedy of damages, restitution, disgorgement,*
20 *or any other form of monetary relief, and is not a*
21 *State attorney general; or*

22 “(B) *monetary relief claims in the action are*
23 *proposed to be tried jointly in any respect with the*
24 *claims of 100 or more other persons on the ground*

1 *that the claims involve common questions of law or*
 2 *fact.*

3 *In any such case, the persons who allegedly were injured*
 4 *shall be treated as members of a proposed plaintiff class*
 5 *and the monetary relief that is sought shall be treated as*
 6 *the claims of individual class members. The provisions of*
 7 *paragraphs (3) and (6) of this subsection and subsections*
 8 *(b)(2) and (d) of section 1453 shall not apply to civil ac-*
 9 *tions described under subparagraph (A). The provisions of*
 10 *paragraph (6) of this subsection, and subsections (b)(2) and*
 11 *(d) of section 1453 shall not apply to civil actions described*
 12 *under subparagraph (B).”.*

13 *(b) CONFORMING AMENDMENTS.—*

14 *(1) Section 1335(a)(1) is amended by inserting*
 15 *“(a) or (d)” after “1332”.*

16 *(2) Section 1603(b)(3) is amended by striking*
 17 *“(d)” and inserting “(e)”.*

18 **SEC. 5. REMOVAL OF INTERSTATE CLASS ACTIONS TO FED-**
 19 **ERAL DISTRICT COURT.**

20 *(a) IN GENERAL.—Chapter 89 is amended by adding*
 21 *after section 1452 the following:*

22 **“§ 1453. Removal of class actions**

23 *“(a) DEFINITIONS.—In this section, the terms ‘class’,*
 24 *‘class action’, ‘class certification order’, and ‘class member’*
 25 *have the meanings given these terms in section 1332(d)(1).*

1 “(b) *IN GENERAL.*—A class action may be removed to
2 a district court of the United States in accordance with this
3 chapter, without regard to whether any defendant is a cit-
4 izen of the State in which the action is brought, except that
5 such action may be removed—

6 “(1) by any defendant without the consent of all
7 defendants; or

8 “(2) by any plaintiff class member who is not a
9 named or representative class member without the
10 consent of all members of such class.

11 “(c) *WHEN REMOVABLE.*—This section shall apply to
12 any class action before or after the entry of a class certifi-
13 cation order in the action, except that a plaintiff class mem-
14 ber who is not a named or representative class member of
15 the action may not seek removal of the action before an
16 order certifying a class of which the plaintiff is a class
17 member has been entered.

18 “(d) *PROCEDURE FOR REMOVAL.*—The provisions of
19 section 1446 relating to a defendant removing a case shall
20 apply to a plaintiff removing a case under this section, ex-
21 cept that in the application of subsection (b) of such section
22 the requirement relating to the 30-day filing period shall
23 be met if a plaintiff class member files notice of removal
24 within 30 days after receipt by such class member, through

1 *service or otherwise, of the initial written notice of the class*
 2 *action.*

3 “(e) *REVIEW OF ORDERS REMANDING CLASS ACTIONS*
 4 *TO STATE COURTS.*—*The provisions of section 1447 shall*
 5 *apply to any removal of a case under this section, except*
 6 *that, notwithstanding the provisions of section 1447(d), an*
 7 *order remanding a class action to the State court from*
 8 *which it was removed shall be reviewable by appeal or oth-*
 9 *erwise.*

10 “(f) *EXCEPTION.*—*This section shall not apply to any*
 11 *class action brought by shareholders that solely involves—*

12 “(1) *a claim concerning a covered security as de-*
 13 *finied under section 16(f)(3) of the Securities Act of*
 14 *1933 and section 28(f)(5)(E) of the Securities Ex-*
 15 *change Act of 1934;*

16 “(2) *a claim that relates to the internal affairs*
 17 *or governance of a corporation or other form of busi-*
 18 *ness enterprise and arises under or by virtue of the*
 19 *laws of the State in which such corporation or busi-*
 20 *ness enterprise is incorporated or organized; or*

21 “(3) *a claim that relates to the rights, duties (in-*
 22 *cluding fiduciary duties), and obligations relating to*
 23 *or created by or pursuant to any security (as defined*
 24 *under section 2(a)(1) of the Securities Act of 1933*
 25 *and the regulations issued thereunder).”.*

1 (b) *REMOVAL LIMITATION.*—Section 1446(b) is
 2 amended in the second sentence by inserting “(a)” after
 3 “section 1332”.

4 (c) *TECHNICAL AND CONFORMING AMENDMENTS.*—The
 5 table of sections for chapter 89 is amended by adding after
 6 the item relating to section 1452 the following:

“1453. Removal of class actions.”.

7 **SEC. 6. APPEALS OF CLASS ACTION CERTIFICATION OR-**
 8 **DERs.**

9 (a) *IN GENERAL.*—Section 1292(a) is amended by in-
 10 serting after paragraph (3) the following:

11 “(4) Orders of the district courts of the United
 12 States granting or denying class certification under
 13 rule 23 of the Federal Rules of Civil Procedure, if no-
 14 tice of appeal is filed within 10 days after entry of
 15 the order.”.

16 (b) *DISCOVERY STAY.*—All discovery and other pro-
 17 ceedings shall be stayed during the pendency of any appeal
 18 taken pursuant to the amendment made by subsection (a),
 19 unless the court finds upon the motion of any party that
 20 specific discovery is necessary to preserve evidence or to pre-
 21 vent undue prejudice to that party.

22 **SEC. 7. EFFECTIVE DATE.**

23 The amendments made by this Act shall apply to any
 24 civil action commenced on or after the date of the enactment
 25 of this Act.

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A BILL

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MARCH 12, 2002

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed